

Steven F. Alder (#00033)  
Assistant Utah Attorney General  
Utah Division of Oil, Gas and Mining  
1594 West North Temple St. #300  
Salt Lake City, Utah 84116  
Tel. 801 538-5348

**FILED**

**APR 11 2011**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR  
AGENCY ACTION OF ENCORE ENERGY  
LLC TO APPEAL A DIVISION ORDER  
REQUIRING PLUGGING AND  
ABANDONING OF THE TOMLINSON  
FEE #1 GAS WELL LOCATED IN THE  
CISCO FIELD IN THE NWNE QUARTER  
OF SECTION 12, TOWNSHIP 21 SOUTH  
RANGE 23 EAST, SLBM, IN GRAND  
COUNTY, UTAH.

and

NOTICE OF AGENCY ACTION FOR AN  
ORDER TO REQUIRE ENCORE ENERGY  
LLC TO PLUG THE ABOVE DESCRIBED  
WELL AND IN THE ALTERNATIVE TO  
ORDER THE SURETY FORFEITED AND  
ORDER THE DIVISION TO PLUG THE  
WELL, RECLAIM THE WELL SITE AND  
TO RECOVER COSTS OF SUCH  
ACTION.

**RESPONSE TO APPEAL**

**AND**

**NOTICE OF AGENCY  
ACTION**

**Docket No.: 2011-010**

**Cause No.: 102-81**

The Division of Oil, Gas, and Mining pursuant to Rule R641-104-131 Utah Admin. Code  
(2010), hereby:

(1) RESPONDS to the appeal by Encore Energy LLC of the Division Order dated  
February 22, 2011 ("Division Order"); and

(2) submits this Notice of Agency Action seeking an Order from the Board pursuant to its authority under Utah Code § 40-6-5(3) and Utah code § 40-6-11(3)(2010) to order Encore Energy LLC (“Encore”) to plug the well, and in the event it does not, to forfeit the surety posted for said well and order the Division to plug the well and take such additional action as necessary to reclaim the well site and recover the costs of such action.

### **RESPONSE TO APPEAL**

The Division of Oil, Gas and Mining (“Division”) responds to the appeal by Encore Energy LLC, (Encore) to the February 22, 2011 Division Order as follows:

1. The requirements governing the obligation to plug a shut-in well are set forth by R649-3-36 and require, unless approved for extended shut-in time by the Division for good cause, that a well that has been shut in for more that five years of inactivity must be plugged and abandoned in accordance with the requirements of R649-3-24.
2. Encore has failed to satisfy the requirements for an extension of time to plug and abandon the Tomilson Fee #1 well as required by the applicable statute and rules since it was first directed to do so on April 16, 2004.
3. Encore’s request for additional time is without merit since it has previously been provided additional time and opportunity to provide evidence of good cause to extend the shut-in time and has failed to provide proof of well integrity by testing and to provide other reasons for extension of time.
4. Encore’s request for more time is unpersuasive since it was issued a Notice of Violation (“NOV”) for the above well on March 8, 2010 for violations of R649-3-36. The NOV required Encore to either provide the information required by rule and that if it failed to do so

that the Division may require Encore to plug and abandon the well. Encore has failed to cure the NOV as required despite having a full year to do so.

5. Notice of this failure to cure the NOV was communicated to Encore on November 4, 2010 and still no action was taken to prove the integrity of the well or otherwise provide good cause for an extended shut-in status

6. The Division Order was issued since Encore ultimately failed to comply with the NOV despite being allowed additional time by the Division to comply.

7. The reasons listed in paragraphs 1, 2, and 3 of the appeal filed in this matter regarding the health of its manager, loss of a partner, and potential sale of the property, although regrettable, do not address or satisfy the requirements of the rule for continued shut-in status.

8. The allegation of completion of an MIT test with initial findings of casing integrity in paragraph 4 and the fluid test listed in paragraph 5 have not been submitted to the Division and are without any substantiation. The allegations alone are not sufficient to justify continued shut-in status of the well.

9. The allegations of a 'new line' [gas collection line] in paragraph 6 of the appeal, is not good cause for an extension of time to plug the well since there are no allegations of capacity, ability, or right to use the 'new line.' The existence of a new line does not address the concerns of well integrity nor of production capacity.

10. The gas flow referenced by paragraph 7 of the appeal of 44 mcf per day matches the initial production more than 25 years ago and is not a basis for good cause to grant an extension now. There is no current production and the most recent production averaged 5 to 6 MCF per day over a seven month period about 5 years ago.

WHEREFORE, Encore has failed to set forth any reason to set aside the Division Order that the well be plugged and abandoned as required, and the Division asks that the appeal be dismissed, and that the Board enter an Order consistent with the attached Notice of Agency Action.

### **NOTICE OF AGENCY ACTION**

The Division for cause of action alleges as follows;

1. The Tomilson Fee #1 well was originally drilled and completed to 1,400 feet of depth on March 23, 1983. The well was perforated in the Cedar Mountain and Morrison Formations
2. From 1984 to 1996 there was no production from the well.
3. Production from the well has been sporadic and inconsistent as follows: from January of 1997 to November of 1998 there was production that averaged 39 MCF per day; there was no production in 1999 and 2000; production in 2001 and 2002 averaged 19.5 MCF per day; there was no production from January 2003 until March 2006; and the last production was from March 2006 to September 2006 averaging 5.7 MCF per day. There has been no production for over 4 1/2 years and only one period of minimal production in over 10 years.
4. The requirements for approval for an extension for the shut-in status for a well is set forth by R649-3-36 and allow a well to be shut-in for a period of more than 12 months if the operator provides a sundry notice explaining the reason for the shut-in status, an estimate of the time of shut-in, and supporting data showing that the well has integrity and other information showing that the well does not pose a risk to public health, safety and the environment. R649-3-36(1). A well that has been shut in for more that five years of inactivity must be plugged and

abandoned in accordance with the requirements of R649-3-24 unless approved by the Division for extended shut-in time for good cause.

5. Notice of non-compliance with the provisions of Rule 649-3-36 was sent to Encore April 16, 2004 and production was begun in March of 2006 but ceased by September 2006.

6. A second notice of non-compliance with the provisions of Rule 649-3-36 was sent to Encore on April 2, 2008, and again on August 11, 2008.

7. Encore submitted a sundry notice dated October 3, 2008 requesting extended shut-in status, but the request was denied for insufficient evidence. Encore submitted a second sundry notice dated January 26, 2009 stating that Encore would perform an MIT on the well as soon as the road to the well was passable but the MIT test was not done.

8. A Notice of Violation of R649-3-36 was issued March 8, 2010, and Encore took no corrective actions.

9. A second NOV for violations of R649-3-36 was issued November 4, 2010 and again no corrective action was taken.

10. The bonding for the well is provided by two separate certificates of deposit: one was provided by Wayne O. Stout for \$5,000.00 and is currently being held by Vectra Bank of Grand Junction, Colorado, and a second was provided by Mr. Oscar Andersen for \$10,000.00 and is currently being held by Grand Valley Bank of Grand Junction, Colorado.

11. Mr. Stout filed a personal bankruptcy on February 25, 2010 and was discharged August 3, 2010. There was no claim made against the bond.

12. Mr. Andersen is deceased and his estate has acknowledged the State of Utah's interests as beneficiary of the CD and released any claim.

13. The total amount of surety available for the plugging of and reclamation of the well is \$15,000.00 in the form of the two CDs held for the benefit of the State of Utah.

14. The mineral interest that are leased and are being produced and the surface ownership are listed as being owned by Alton E. Tomlinson and heirs as listed on the county tax rolls, care of Tim Tomlinson 1620 8 Road, Mack, CO, 81525.

15. A Division Order was issued February 22, 2011 requiring Encore take action to contract for the plugging and abandonment of the well.

16. The Division has not been provided any evidence to substantiate that any corrective action has been taken to address the well integrity or potential for production, although Encore's manager has alleged in his appeal that well integrity is being tested and that the well is for sale.

17. The Division finds the allegation in the appeal to be insufficient to justify a continuation of the shut-in status and believes the well needs to be plugged in order to prevent injury to the public health and environment.

#### Relief Requested

Wherefore, the Division requests the Board enter an Order as follows:

1. Require Encore to plug and abandon the Tomilson Fee #1 well in accordance with the Division's requirements and the requirements of R649-3-24;

2. Provide in the Order that if Encore fails to contract for the work within 30 days and/or fails to complete plugging and abandonment of the well as required with reasonable speed, that the surety held to guaranty such work shall be forfeited to the Division, and the Division shall take appropriate action to plug and abandon the well with the funds from the surety;

3. Provide that in the event Encore fails to plug the well, the Division may take such other actions as are reasonable and necessary to recover the costs of the plugging and

abandonment and reclamation work, including recovery of penalties as appropriate in accordance with Utah Code 40-6-11(3)(b) and (4).

4. Grant such other relief as may be just and proper under the law based on the evidence adduced.

Respectfully submitted this 11<sup>th</sup> day of April, 2011.

UTAH DIVISION OF OIL, GAS, AND MINING



Steven F. Alder  
Assistant Utah Attorney General

## CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2011, a true and correct copy of the foregoing

RESPONSE TO APPEAL AND NOTICE OF AGENCY ACTION was sent to the following:

By hand delivery to  
Mike Johnson, Attorney for the  
Board of Oil, Gas and Mining  
1594 West North Temple  
Salt Lake City, Utah 84116

Encore Energy LLC  
1216 18-1/2 Road  
Fruita, CO 81521-9064

Encore Energy LLC  
c/o Wayne O. Stout  
924 S 1000 E  
Orem, UT 84097

Wayne O Stout  
1216 18-1/2 Road  
Fruita, CO 81521-9064

C. Joseph Croker, P.C.  
Estate of Oscar Anderson  
PO Box 2202

Grand Junction, CO 81502-2202

Betty Baldwin  
Grand Valley Bank  
925 N 7<sup>th</sup> St  
Grand Junction, CO 81501

Branch Manager  
Vectra Bank  
2394 F Road  
Grand Junction, CO 81505

Ruby Tomlinson Beebe and  
George D. Beebe  
239 N. Elm  
Fruita, CO 81521

Alton E. Tomlinson, et al  
c/o Tim Tomlinson  
1620 8 Road  
Mack, CO 81525



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